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ABSTRACT

This pamphlet examines free appropriate public education (FAPE) requirements of Section 504 of the Rehabilitation Act of 1973, focusing on four concerns: (1) eligibility for a free appropriate public education; (2) how an "appropriate education" is defined; (3) how Section 504 provisions relate to FAPE provisions in the Individuals with Disabilities Education Act (IDEA); and (4) how a "free education" is defined. In general, all school-age children with disabilities are entitled to FAPE. Characteristics of an appropriate education include educational services that meet individual needs, education with nondisabled students, nondiscriminatory evaluation and placement, and provision of due process procedures for the review of evaluation and placement decisions. Compliance with the requirements of a "free education" may be met by the district directly or through placement in an out-of-district facility. The requirements of FAPE under IDEA are more detailed than those under Section 504, and compliance with IDEA usually also results in compliance with Section 504. However, Section 504 applies to any program receiving Education Department support and not only to states receiving federal assistance under IDEA. (DB)

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ED 402 724

FREE APPROPRIATE PUBLIC EDUCATION FOR STUDENTS WITH HANDICAPS

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Free Appropriate Public Education for Students with Disabilities: Requirements Under Section 504 of the Rehabilitation Act of 1973 *

U.S. Department of Education
Office for Civil Rights

September 1996

* NOTE: COVER TITLE SHOULD HAVE CHANGED "HANDICAPS" TO "DISABILITIES", BUT DID NOT.

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FREE APPROPRIATE PUBLIC EDUCATION FOR STUDENTS WITH DISABILITIES: REQUIREMENTS UNDER SECTION 504 OF THE REHABILITATION ACT OF 1973

INTRODUCTION

Section 504 of the Rehabilitation Act of 1973 protects the rights of individuals with disabilities in programs and activities that receive Federal financial assistance. Section 504 provides that: "No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . "[1]

The U.S. Department of Education (ED) enforces Section 504 in programs and activities that receive assistance from ED. Recipients of this assistance include public school districts, institutions of higher education, and other state and local education agencies. ED has published a regulation implementing Section 504 (34 C.F.R. Part 104), and maintains an Office for Civil Rights (OCR), with 12 regional offices and a headquarters office in Washington, D.C., to enforce Section 504 and other civil rights laws that pertain to recipients of funds.[2]

FREE APPROPRIATE PUBLIC EDUCATION

The Section 504 regulation requires a recipient operating federally funded public elementary and secondary education programs to provide a "free appropriate public education" (FAPE) to each qualified person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

This pamphlet answers the following questions about FAPE:

- Who is entitled to a free appropriate public education?
- How is an appropriate education defined?
- How is a free education defined?

WHO IS ENTITLED TO FAPE?

All qualified persons with disabilities who reside in the jurisdiction of an ED recipient operating public elementary or secondary education programs are entitled to a free appropriate public education. The ED Section 504 regulation defines a person with a disability as any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.[3]

For elementary and secondary education programs, a qualified

person with a disability is a person with a disability who is:

1. of an age during which it is mandatory under state law to provide such services to persons with disabilities;

2. of an age during which persons without disabilities are provided such services; or

3. a person for whom a state is required to provide a free appropriate public education under the Individuals with Disabilities Education Act (IDEA). (IDEA is discussed later in the pamphlet.)

In general, all school age children who have disabilities are entitled to FAPE.

HOW IS AN APPROPRIATE EDUCATION DEFINED?

An appropriate education may be defined in different ways. An appropriate education could consist of education in regular classes, education in regular classes with the use of supplementary services, or special education and related services in separate classrooms for all or portions of the school day. Special education may include specially designed instruction in classrooms, at home, or in private or public institutions, and may be accompanied by such related services as speech therapy, occupational and physical therapy, and psychological counseling and

medical diagnostic services necessary to the child's education.

An appropriate education will include:

1. nondiscriminatory evaluation and placement procedures established to guard against misclassification or inappropriate placement of students, and a periodic reevaluation of students who have been provided special education or related services;

2. educational services designed to meet the individual educational needs of students with disabilities as adequately as the needs of nondisabled students are met;

3. the education of each student with a disability with nondisabled students, to the maximum extent appropriate to the needs of the student with a disability; and

4. establishment of due process procedures that enable parents and guardians to review their child's records and challenge evaluation and placement decisions and that provide for an impartial hearing with opportunity for participation by parents and representation by counsel, and a review procedure.

Educational Services Must Meet Individual Needs

To be appropriate, educational programs for students with disabilities must be designed to meet their individual needs to the same extent that the needs of nondisabled students are met. An appropriate education may include

regular or special education and related aids and services to accommodate the unique needs of individuals with disabilities.

For example, a blind student may be given braille materials and instruction in their use in order to participate in the regular classroom setting.

To adequately meet individual needs, academic services for students with disabilities may need to be significantly different in character from those offered to students without disabilities. One procedure for ensuring that programs meet individual needs is the development of an individualized education program (IEP) for each student with a disability. IEPs are required for students participating in special education programs of recipients of funding under the IDEA.

The quality of educational services provided to students with disabilities must equal that provided to nondisabled students. For example, teachers of students with disabilities must meet standards for certification as high as those teachers of nondisabled students meet. Facilities must be of equal quality, and appropriate materials and equipment must be available.

Students with disabilities may not be excluded from participating in nonacademic services and extracurricular activities on the basis of disability. Persons with disabilities must be provided an opportunity to participate in

nonacademic services that is equal to that provided to persons without disabilities. These services may include physical education and recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school, referrals to agencies that provide assistance to persons with disabilities and employment of students.

Students With Disabilities Must be Educated With Nondisabled Students

Students with disabilities and students without disabilities must be placed in the same setting, to the maximum extent appropriate to the educational needs of the students with disabilities. A recipient must place a person with a disability in the regular educational environment, unless it is demonstrated by the recipient that the student's needs cannot be met satisfactorily with the use of supplementary aids and services. Students with disabilities must participate with nondisabled students in both academic and nonacademic services, including meals, recess, and physical education to the maximum extent appropriate to their individual needs.

As necessary, specific supplementary aids must be provided for students with disabilities to ensure an appropriate educational setting. Supplementary aids may include interpreters for students who are deaf, readers for students who are

blind, and equipment to make physical accommodations for students with mobility impairments.

A recipient that places an individual with disabilities in another school is responsible for ensuring that the student receives a free appropriate public education as close to his/her home as possible.

If a recipient operates a facility for persons with disabilities, the facility and associated activities must be comparable to other facilities, services, and activities of the recipient.

Evaluation and Placement Must be Nondiscriminatory

Failure to provide persons with disabilities with an appropriate education frequently occurs as a result of misclassification and inappropriate placement. It is unacceptable to base individual placement decisions on presumptions and stereotypes regarding persons with disabilities or on classes of such persons. For example, it would be a violation of the law for a recipient to adopt a policy that every student who is hearing impaired, regardless of the severity of the child's disability, must be placed in a state school for the deaf.

Section 504 requires the use of evaluation and placement procedures that ensure that children are not misclassified, unnecessarily labeled as having a disability, or incorrectly placed,

based on inappropriate selection, administration, or interpretation of evaluation materials.

An individual evaluation must be conducted before any action is taken with respect to the initial placement of a child who has a disability, or before any significant change in that placement. Recipients must establish standards and procedures for initial and continuing evaluations and placement decisions regarding persons who, because of disability, need or are believed to need special education or related services. These procedures must ensure that tests and other evaluation materials:

- have been validated for the specific purpose for which they are used, and are administered by trained personnel in conformance with the instructions provided by their producer;

- include materials tailored to assess specific areas of educational need and not merely materials that are designed to provide a single general intelligence quotient; and

- are selected and administered so as to best ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the

test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

Recipients must draw upon a variety of sources in the evaluation process so that the possibility of error in classification is minimized. All significant factors related to the learning process, including adaptive behavior, must be considered. Adaptive behavior is the effectiveness with which the individual meets the standards of personal independence and social responsibility expected of his or her age and cultural group.

Information from all sources must be documented and considered by a group of knowledgeable persons, and procedures must ensure that the student is placed with nondisabled students to the greatest extent appropriate.

Periodic reevaluation is required. This may be conducted in accordance with the IDEA regulation, which requires reevaluation at three-year intervals or more frequently if conditions warrant, or if the child's parent or teacher requests an evaluation.

Recipients Must Have Due Process Procedures for the Review of Evaluation and Placement Decisions

Public elementary and secondary schools must employ procedural safeguards regarding the

identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services. Parents must be told about these procedures. In addition, parents or guardians must be notified of any evaluation or placement actions, and must be allowed to examine the student's records. The due process procedures must allow the parents or guardians of students in elementary and secondary schools to challenge evaluation and placement procedures and decisions.

If parents or guardians disagree with the school's decisions, they must be afforded an impartial hearing, with an opportunity for participation and representation by counsel. A review procedure must be available to parents or guardians who disagree with the hearing decision.

HOW IS A FREE EDUCATION DEFINED?

Recipients operating federally funded programs must provide necessary services free of charge to students with disabilities and their parents or guardians. Provision of a free education is the provision of educational and related services without cost to the person with a disability or his/her parents or guardians, except for fees equally imposed on nondisabled persons or their parents or guardians.

If a recipient is unable to provide a free appropriate public education

itself, the recipient may place a person with a disability in, or refer such person to, a program other than the one it operates.

However, the recipient remains responsible for ensuring that the education offered is an appropriate education, as defined in the law, and for coverage of financial obligations associated with the placement.

The cost of the program may include tuition and other related services, such as room and board, psychological and medical services necessary for diagnostic and evaluative purposes, and adequate transportation. Funds available from any public or private source, including insurers,[4] may be used by the recipient to meet the requirements of FAPE.

If a student is placed in a private school because a school district cannot provide an appropriate program, the financial obligations for this placement are the responsibility of the school district. However, if a school district makes available a free appropriate public education and the student's parents or guardian choose to place the child in a private school, the school district is not required to pay for the student's education in the private school. If a recipient school district places a student with a disability in a program that requires the student to be away from home, the recipient is responsible for the cost of room and board and nonmedical care. If

the student's residential care is necessitated by the student's home condition and not by the educational needs associated with the student's disability, the recipient is not required to pay for room and board.

To meet the requirements of FAPE, a recipient may place a student with a disability in, or refer such student to, a program not operated by the recipient. When this occurs, the recipient must ensure that adequate transportation is provided to and from the program at no greater personal or family cost than would be incurred if a person with a disability were placed in the recipient's program.

FAPE PROVISIONS IN THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)

The IDEA, administered by ED's Office of Special Education and Rehabilitative Services (OSERS), also has provisions requiring states to provide eligible students with disabilities with a free appropriate public education. To be eligible for FAPE under the IDEA, a child must have one or more of the 13 disabilities listed in the IDEA, and must be found to require special education and related services by reason of one or more of these disabilities. The disabilities specified in the IDEA include: mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic

brain injury, other health impairments, or specific learning disabilities. The requirements for FAPE under the IDEA are more detailed than those under Section 504. In specific instances detailed in the Section 504 regulation (for example, with respect to reevaluation procedures and the provision of an appropriate education), meeting the requirements of the IDEA is one means of meeting the requirements of the Section 504 regulation. While IDEA requirements apply only to states receiving financial assistance under the IDEA, Section 504 applies to any program or activity receiving ED financial assistance. Information about the IDEA can be obtained by writing to OSERS at 600 Independence Avenue, S.W., Washington, D.C. 20202. For more information about FAPE under Section 504, contact the appropriate Office for Civil Rights regional office.

HOW TO OBTAIN FURTHER ASSISTANCE/INFORMATION

To obtain additional assistance, see the enclosed insert of OCR's regional offices, which contains the address and telephone number for the OCR office that serves your area.

* ED/OCR92-5 (needs to be changed)

* NOTE: REPORT NUMBER OF PRIOR EDITION SHOULD HAVE BEEN CHANGED, BUT WAS NOT.

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1. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 6794.

2. Title II of the Americans With Disabilities Act of 1990, (ADA), 42 U.S.C. § 12131 et seq., prohibits state and local governments from discriminating on the basis of disability. ED enforces Title II in public elementary and secondary education systems and institutions. The requirements regarding the provisions of a free appropriate public education (FAPE), specifically described in the Section 504 regulations, are incorporated in the general non-discrimination provisions of the Title II regulation. Because Title II does not change the requirements of FAPE, this pamphlet will refer only to Section 504.

3. The Section 504 regulation uses the term "handicap." However, Congress has amended the Rehabilitation Act of 1973 and has replaced the term "handicap" with the term "disability." The terms "handicap" and "disability" have the same meaning. This pamphlet will only use the term disability.

4. A recipient responsible for providing FAPE may not require parents to use private insurance proceeds to pay for required services where the parents would incur financial loss.

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